Thorgren Tool & Molding, Inc. *and* Local Lodge 1227, District Lodge 72 of the International Association of Machinists & Aerospace Workers, AFL–CIO. Cases 25–CA–21263–1, 25–CA–21263–2, and 25–CA–21428

September 30, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On December 31, 1992, Administrative Law Judge Karl H. Buschmann issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief (which is styled a reply brief).

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified and to adopt the recommended Order as modified.[1]

The judge found that the Respondent violated the Act by refusing to allow employee Ricky Lockard to work overtime because of his union activities. The Respondent excepts to this finding, claiming that it denied Lockard the chance to work overtime because of his poor workmanship. We find merit in this exception.

In March 1991,[2] the Respondent posted a notice offering employees the chance to volunteer for weekend overtime work. Ricky Lockard volunteered to work overtime on Friday and Saturday, March 22 and 23. Tool Room Supervisor Glenn Dowd told Lockard that on March 21 Lockard had produced some defective parts and showed him two ''short'' parts (parts missing plastic in some places). Dowd gave Lockard a written warning for poor work performance and told him he would not be allowed to work overtime because of the defective work.[3]

The Respondent's vice president, Robert Thorgren Jr., testified that, after Lockard's March 21 reprimand, he ordered that Lockard not be assigned overtime work because he thought it would be ''ludicrous'' to assign overtime work to an employee who could not produce properly on his regular shift.

The judge found that Lockard was the only employee denied overtime as a means of discipline for inferior work performance. Although the record shows that the Respondent disciplined three other employees for poor work performance by suspending them, the judge concluded that the Respondent's denial of overtime constituted disparate treatment of Lockard. We disagree.

There is no dispute that Lockard's work performance was inadequate on March 21 and that he had been disciplined previously for poor work performance. Further, the record shows that the Respondent has disciplined other employees for poor work performance. We can discern in these facts no basis for the judge's finding of disparate treatment.[4] Therefore, we conclude that, even assuming the General Counsel established a prima facie case, the Respondent showed it would have disciplined Lockard even in the absence of his union activities. We shall amend the judge's conclusions of law and modify his recommended Order accordingly.

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 5.

''5. By discharging its employee Harold Barkley because of the Union, the Respondent violated Section 8(a)(3) and (1) of the Act.''

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Thorgren Tool & Molding, Inc., Valparaiso, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(c).

''(c) Discharging employees because of the Union or otherwise discriminating against them because of their union activities.''

2. Substitute the following for paragraph 2(a) and reletter the remaining paragraphs accordingly.

''(a) Offer Harold Barkley immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position without prejudice to his seniority or any other rights or privileges previously enjoyed and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

''(b) Remove from its files any reference to the unlawful discharge and notify the employee in writing

[1] We shall modify the judge's recommended Order to add a requirement that the Respondent expunge from its records any reference to the unlawful discharge of employee Harold Barkley.

[2] All subsequent dates are in 1991 unless indicated otherwise.

[3] Lockard had received written warnings for poor work performance on March 21, 1990, and January 18.

[4] An essential ingredient of a disparate treatment finding is that other employees in similar circumstances were treated more leniently than the alleged discriminatee was treated. See *Storer Communications*, 287 NLRB 890, 899–900 (1987) (disparate treatment where discriminatee's warning was more severe than warnings issued other employees). It is conceivable that there are circumstances under which a suspension could be found more lenient than a denial of overtime. It would, however, be the General Counsel's burden to show those circumstances. On the record in this case, we do not believe the General Counsel showed that the suspensions of others constituted more lenient treatment than the denial of overtime to Lockard.

that this has been done and that the discharge will not be used against him in any way.''

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten our employees with more onerous working conditions because of their union activities or threaten them that we would never reach a collective-bargaining agreement with the Union.

WE WILL NOT post a notice granting increased overtime or announce other inducements to support the decertification effort.

WE WILL NOT discharge employees or otherwise discriminate against them because of their union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Harold Barkley full and immediate reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position without prejudice to his seniority and other rights and privileges, and WE WILL make him whole for any loss of earnings and other benefits he may have suffered by reason of the discrimination practiced against him, with interest.

WE WILL notify Harold Barkley that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

THORGREN TOOL & MOLDING, INC.

Ann Rybolt, Esq., for the General Counsel.
Sara J. Herrin, Esq., of Chicago, Illinois, for the Employer.
Anna R. Samick, of Valparaiso, Indiana, for the Charging Party

DECISION

KARL H. BUSCHMANN, Administrative Law Judge. These cases were tried on February 24 and 25, 1992, in Portage, Indiana. The charges in Cases 25–CA–21263–1 and 25–CA–21263–2 and in Case 25–CA–21428 were filed by Local Lodge 1227, District Lodge 72, International Association of Machinists and Aerospace Workers, AFL–CIO (the Union), charging that Thorgren Tool & Molding, Inc. (the Respondent or the Company), has engaged in unfair labor practices. The complaints, consolidated by order of October 18, 1991, allege that the Company violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act), by (a) discharging Harold Barkley because of his familial ties to a union supporter; and in order to discourage union support, (b) threatening employees that the Company would never reach a collective-bargaining agreement and threatening employees with more onerous working conditions; (c) refusing to give Ricky Lockard overtime hours because of his union activities; (d) granting its employees increased overtime opportunities to encourage decertification efforts; and (e) refusing to furnish the Union with certain information.[1]

The Respondent filed timely answers in which the jurisdictional allegations in the complaint are admitted and in which the substantive allegations of unfair labor practices are denied.

On the entire record,[2] including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Thorgren Tool & Molding, Inc., is an Indiana corporation located in Valparaiso, Indiana, where it is engaged in the manufacture, sale, and distribution of blades and related items. With sales and shipments from its Valparaiso, Indiana facility of goods valued in excess of $50,000 directly to points located outside the State of Indiana, the Respondent is admittedly an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Union is admittedly a labor organization within the meaning of Section 2(5) of the Act.

FACTS

Thorgren Tool & Molding, Inc. is a family enterprise founded by Robert Thorgren, president, and managed by his son, Robert Thorgren Jr., vice president. Eleanor Thorgren, wife of the president, is secretary of the corporation and still works daily at the plant, although her husband, the president, only works occasionally and occupies most of his time on his 100-acre farm where he conducts a racehorse operation (Tr. 81).

In February and March 1990, the Union began an organizational campaign among the Company's approximately 60 production employees (Tr. 110, G.C. Exh. l5). Following the filing of a petition for an election by the Union, an election was held on May 9, 1990, in which the Union was elected as the employees' bargaining representative. The unit was certified on May 17, 1990, as follows (G.C. Exh. 3):

> All molding department employees, all packing department employees, all shipping and warehouse department employees, all quality control department employees, and all tool room set-up employees employed by the Employer at its Valparaiso, Indiana facility;

[1] The allegation relating to the Union's refusal to furnish information was withdrawn (Tr. 7). These allegations relating to Sec. 8(a)(1) and (5) are stricken.

[2] The General Counsel's motion to correct transcript is granted.

> BUT EXCLUDING all tool and die maker employees, all tool and die maker apprentice employees, all office clerical employees, all professional employees, all guards and supervisors as defined in the Act.

The Company and the Union began contract negotiations in August 1990, but failed to reach an agreement. On February 11, 1991, the Respondent presented its final offer (Tr. 130). Shortly thereafter, certain bargaining unit employees picketed the plant for about a month (Tr. 130–131). On February 6, 1991, the Valparaiso newspaper, the Vidette-Messenger, published a detailed article about the pickets at Thorgren Tool and Molding and prominently displayed the picture of one of the principal union activists, Rachel Carlson, on the picket line (G.C. Exh. 4).

On February 9, 1991, Rachel Carlson's son-in-law, Harold Barkley, found a letter in his truck which Robert Thorgren Sr. had written on yellow legal pad paper to inform Barkley that he was fired from his job (G.C. Exh. 8). Barkley had initially worked as a production or maintenance employee at the Respondent's plant (Tr. 82). He subsequently divided his working hours between that job and Thorgren's horse farm and finally worked exclusively at the farm for the last 10 years. During that time Barkley remained on the Company's payroll (Tr. 84).

The General Counsel submits that Barkley was fired from his job in retaliation for his mother-in-law's (Rachel Carlson's) union activity. The Respondent's position is that Thorgren terminated Barkley's job at the farm because it was too expensive to keep him on and he did not want to continue spending so much money on the horse and racing business (R. Br. p. 6).

On March 5, 1991, Jack Beiswanger, a supervisor, approached Julie Pitt, an employee working as a grinder, and in an excited and angry manner accused her of sabotaging the machine. When Pitt replied that she ''didn't know what he was talking about,'' he said the following (Tr. 297):

> I will play your fucking union game. You will see . . . . I will make it so hard for you in here, you won't be able to—if you don't have anything else to do, come and find me and I will find something for you to do.

The General Counsel argues that this threat of more onerous working conditions violated Section 8(a)(1) of the Act. The Respondent states that Pitt's working conditions did not change, nor was she otherwise disciplined as a result of this incident and because the supervisor's reference related to sabotage and not to the employee's union activity, no violation occurred (R. Br. p. 8, 18).

One morning during the middle of March 1991, Supervisor Beiswanger had a conversation in the warehouse with Michael Phipps, an employee. Beiswanger told Phipps that he knew that Julie Pitt and another employee had sabotaged the machinery. He said that ''people were too tense around the plant.'' When Phipps said that ''things would probably calm down'' if the employees had a contract, Beiswanger replied that employees ''wouldn't get a contract, would probably never give [them] a contract and [they] would have a hell of a fight on [their] hands'' (Tr. 307).

Beiswanger's statement was unlawful, according to the General Counsel, because it was coercive and conveyed the message that bargaining would be futile. The Respondent argues that the statement contains not a hint of a threat or coercion and was merely an expression of an opinion (R. Br. p. 19).

In March 1991, the Company posted a sheet permitting machine operators to volunteer for overtime work on weekends (Tr. 279). Employee Ricky Lockard volunteered on approximately five occasions by writing his name on the posted sheets (G.C. Exh. 7). Lockard, who was a prominent union activist was not selected, because Robert Thorgren Jr. had instructed his secretary Dianne Shepard ''not to assign him shifts on the weekend'' (Tr. 57). Thorgren testified that Lockard produced bad parts and had received prior warnings about similar incidents. Accordingly, Lockard received a reprimand and was prevented from overtime work on weekends (Tr. 57, G.C. Exh. 13). But the General Counsel submits that Lockard's union activities were the real reasons behind Respondent's conduct.

On May 29, 1991, the Respondent posted on its bulletin board a memorandum from Thorgren Jr. to the employees notifying them that a petition for decertification of the Union had been filed with the Board on May 23, 1991. The memorandum also stated: ''We hope and expect that an election will be scheduled in the near future so that you may vote by secret ballot to decide whether or not you wish to be represented by Local Lodge 1227 of the IAM'' (G.C. Exh. 5). On the same day, the Respondent posted a notice adjacent to the union notice informing the employees as follows (Tr. 42–44, 144–145):

> Due to an unexpected, temporary surge in orders, we are currently offering overtime before and after shifts for personnel as machine operators [G.C. Exh. 6, 11].

Yet prior to this time, overtime on such a liberal scale was not available to the employees since the election in May 1990 (Tr. 279). The only other time when overtime was offered occurred in March 1991 when it was offered on weekends. Moreover, employees Rachel Carlson and Julie Pitt testified that they were familiar with production schedules which showed the customer's name, the material, and the amount of the order. Carlson was also familiar with the ''pink cards'' which disclosed the due date of the order and the time the order had to be ready for shipment (Tr. 152–153, 303–324). According to their testimony, the Company had not experienced any sudden upsurge in new orders. Thorgren, on the other hand, testified that the Company experienced absenteeism and that machines sat idle, he also stated that he expected several customers to place new orders. Prompted by customer complaints, he decided to make overtime available (Tr. 71–75).

The General Counsel's argument that the Respondent's offer of overtime was designed to affect the outcome of the decertification petition is countered by Respondent's argument that the simultaneously posted notices were simply a coincidence and that the Company's decision was unrelated to the union notice.

Analysis

Section 8(a)(3) and (1) of the Act prohibits the discriminatory treatment of even a nonunion employee if the employer's conduct was motivated by antiunion animus. *Jack August Enterprises*, 232 NLRB 881, 900 (1977), enfd. 583 F.2d

575 (lst Cir. 1978). Although Harold Barkley had worked on Thorgren's horse farm for the last few years, the record shows that he had remained on the Company's payroll, receiving a salary and ''was on the shop benefits too'' (Tr. 84, 95). Thorgren, in his four-page message to Barkley, listed these company benefits in great detail for 1990, showing for example Barkley's yearly and weekly salary, his vacation benefits, his pension plan, and an insurance package (G.C. Exh. 8). Barkley, who began his employment in 1972 as a maintenance or production worker at the plant, learning all phases of the business, and who subsequently spent more of his working hours at Thorgren's farm until he worked there exclusively, did not thereby lose his status as an employee.

The reasons for his discharge are indirectly related to the Union, as demonstrated by Thorgren's letter generally informing Barkley that he was no longer needed on the farm and describing in detail his past financial benefits. The letter refers extensively to Rachel and Toni in several significant ways. Stating that he ''never said too much about Toni and Rachel although [he] thought about it a lot but kept [his] mouth shut,'' Thorgren continued, ''I can't figure those people you live with out, Toni & Rachel . . . they still seem filled with hate about something.'' Thorgren further stated (G.C. Exh. 8):

> Rachel, it seems to me has also been treated fairly . . . yet she seems determined to destroy the shop. We operated at a near loss in 1990 and now we have union people working against us.

The letter clearly shows that Thorgren associated Rachel Carlson and her daughter Toni with Barkley, they were part of the same household, and they derived their income from the Respondent. The letter also showed Thorgren's antiunion animus and his opposition to Carlson's involvement with the Union. Thorgren's message was clear; he felt betrayed by Carlson's union support and he reacted accordingly.

Carlson's extensive union support is well documented in the record. She was the subject of unfair labor practice charges on July 9, 1990 (G.C. Exh. 9). The charges were settled by an agreement on October 15, 1990 (G.C. Exh. 10). Subsequently, Carlson served on the union negotiating committee and participated in the Union's picketing of the plant (Tr. 140). Thorgren admitted seeing the report and Carlson's picture in the local paper, carrying a sign saying, ''Take Care of *US*, WE have Been Taken [sic] Care of *YOU*'' (Tr. 101, G.C. Exh. 4).

Thorgren's action in drafting the letter—three days following the newspaper report—as well as the letter's content show that he reacted to the report. The longest portion of his letter was devoted to a demonstration and an accounting of the benefits received by Carlson and her daughters in an attempt to show that he had taken care of them. Moreover, even though Thorgren had frequently complained to Barkley about Carlson's union activity, saying that Rachel was a problem that he couldn't understand that ''she is organizing against him'' after ''everything he had done for her,'' he did nothing until the article and Carlson's picture appeared in the paper. The timing of Barkley's discharge, as well as Thorgren's explanations in the letter and the surrounding circumstances clearly show that Thorgren acted—somewhat reluctantly—against Barkley in lieu of Carlson who was the subject of a prior settlement. I, accordingly, find that the General Counsel has established a prima facie case that the discharge of Barkley was motivated by Carlson's union activity, *Wright Line*, 251 NLRB 1083 (1980), enfd. 602 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 984 (1982). The Respondent has failed to demonstrate that it would have taken the same action against Barkley even in the absence of any union considerations. The parties are in agreement that Respondent's financial ability did not play a role in the discharge (Tr. 8). And it is clear that Barkley could have been reassigned to his former work in the plant or Thorgren could have offered to keep Barkley on a part-time basis at a reduced salary if his farm work did not justify a continuation of the same employment relationship. In short, Respondent's reasons for the discharge were implausible and pretextual.

The allegation of 8(a)(1) misconduct is fully supported by the record. Supervisor Beiswanger who blamed Julie Pitt for intentionally damaging a machine, was angry when he threatened her with more onerous working conditions on March 5, 1991. With a clear reference to the Union or ''union games,'' he screamed at her ''I will make it so hard for you in here, you won't be able to'' in a tone of voice described as very loud, very mean, and swearing (Tr. 297). Even though the Respondent did not follow through on these threats, such conduct is clearly coercive and constitutes an interference with an employee's Section 7 rights in violation of Section 8(a)(1).

Beiswanger's subsequent remark to employee Michael Phipps was not made in anger or in a threatening tone. But his message was clear, the Company would not bargain in good faith and bargaining would be futile, because the Respondent would never give them a contract. Such a message has long been regarded as coercive and in violation of Section 8(a)(1) of the Act.

The next allegation presents the question whether the Company's refusal to assign overtime work on weekends to Ricky Lockard was based upon his union activities or a consequence of his inferior workmanship. Lockard had been employed as a molding operator since July 1989. Since March 1990, Lockard had actively supported the Union and was listed among the five campaign supporters in a letter, dated March 6, 1990, from the Union to the Company (G.C. Exh. 2). As a member of the organizing committee, he distributed union literature and union authorization cards. He always wore union buttons and other union insignia, he attended union meetings and participated in the February 1991 picketing of the plant (Tr. 273–274). When in March 1991, overtime was offered to the employees, he volunteered by signing the signup sheets (G.C. Exh. 7). On the following day, March 23, 1991, he noticed that he was not among the employees scheduled for overtime. Instead, he received an ''Employee Disciplinary Report,'' signed by Supervisor Glenn Dowd, who explained that Lockard had produced ''short parts'' on the prior day and was not permitted to work overtime (G.C. Exh. 13, Tr. 276–279). Lockard volunteered several times thereafter for overtime but was not scheduled even though he had more seniority than other employees who were scheduled (Tr. 280–281). Vice President Thorgren testified that he had instructed his secretary not to assign Lockard any overtime work because he had performed defective parts on prior occasions. The record shows that

prior to the March reprimand, Lockard received a written warning on March 21, 1990, because of carelessness and destruction of company property and another one on January 18, 1991 for carelessness and defective work (Tr. 289–291, Exhs. 1, 2). While it does not appear implausible for a supervisor to deny to an employee a company benefit because of the employee's inferior performance on his job, he was the only employee ever disciplined in such a fashion (Tr. 60, 285). The Company had in the past issued suspensions to several employees (Tr. 319–320).[3] Moreover, the record also shows that other employees had produced defective parts and that it was not an uncommon occurrence (Tr. 61, 285). Considering the disparate treatment of Lockard, the timing of Respondent's action, approximately 1 month after the newspaper publicity about the picketing, and the surrounding circumstances, including other violations of the Act, I conclude that Respondent's conduct was actually motivated by Lockard's extensive union activity. Again the Respondent has not shown that it would have taken the same action in the absence of any union consideration. *Wright Line*, supra.

The final allegation in the complaint, the offer of overtime as an inducement to affect the decertification petition, must also be upheld. The decertification petition was filed with the National Labor Relations Board on May 23, 1991. On May 29, 1991, the Company posted a company notice on the bulletin board informing the employees that the petition had been filed and that the Company expected an election (G.C. Exh. 5). On the same day and next to it, the Respondent posted a notice ''offering overtime before and after shifts for personnel as machine operators'' (G.C. Exhs. 6, 11). The notice stated that the Company had taken the action ''[d]ue to an unexpected, temporary surge in orders.'' Thorgren's testimony in this regard was not convincing and certainly did not show any temporary situation. His testimony, unsupported by any documentary evidence, explained that machines stood idle due to a lack of operators, that the Company was behind in filling orders and that he anticipated new orders from such firms as Fedders, Broan, Owens-Corning, Carrier, and Mashushista, a new customer (Tr. 327, 331–335). His testimony, however, does not convincingly support the claim of ''an unexpected, temporary surge in new orders.'' Indeed, employees Julie Pitt and Rachel Carlson who were familiar with the manufacturing backlog did not observe any increase in new orders. They supported Thorgren's testimony that the Company was behind in meeting its production schedule and that the workforce was reduced through attrition. However, according to their observations, there was no change and the Company always lagged behind in filling orders. Thorgren so much as conceded that the production problems had existed prior to the posting of the notice. When asked when he decided that the solution to the Company's problem required overtime, he stated, ''it had probably been coming for some time prior to my posting'' (Tr. 73). He explained further that he had an attendance problem, that June was the heaviest vacation time and that customers were calling every day requesting that their orders be filled (Tr. 74–75). While under those circumstances the Respondent may well have exercised its sound business judgment to schedule overtime for its employees to increase production, there is no explanation in the record for the timing of the postings. Counsel's direct question in this regard did not provide a plausible reply: ''I think that there was probably a great pressure by our people receiving phone calls and saying hey, we're not getting our product, where is our product'' (Tr. 75). Respondent's argument provides this explanation: ''It was simply a coincidence that both notices were posted the same day'' (R. Br. p. 22).

The Board has faced the issue of employer inducements for a long time, offers of money accompanied by an urging to vote a particular way is usually regarded as an unlawful interference, or increases in pay in the context of repeated references to the union, or benefits announced before an election calculated to influence the employees' choice. *NLRB v. Rich's of Plymouth*, 578 F.2d 580 (1st Cir. 1978); *Coronet Instructional Media*, 250 NLRB 940 (1980); *Coca Cola Bottling Co.*, 132 NLRB 481 (1961). I am not convinced that the offer of overtime posted on the same day with the notice of a decertification petition was a mere coincidence. I find instead that the posting was made in a calculated effort to encourage the employees to support the decertification effort in violation of Section 8(a)(1) and (3) of the Act.

CONCLUSIONS OF LAW

1. Thorgren Tool & Molding, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Local Lodge 1227, District Lodge 72, International Association of Machinists and Aerospace Workers, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening its employees with more onerous working conditions if they supported the Union or served as union officers, and by threatening employees that the Respondent would never reach a collective-bargaining agreement with the Union, the Respondent violated Section 8(a)(1) of the Act.

4. By posting a notice granting its employees greatly increased overtime work opportunities in order to encourage unit employees to abandon their support of the Union and to support the decertification effort, the Respondent violated Section 8(a)(1) and (3) of the Act.

5. By discharging its employee Harold Barkley and by refusing to provide its employee Ricky Lockard the overtime work, because of the Union, the Respondent violated Section 8(a)(3) and (1) of the Act.

6. The unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having unlawfully refused to provide overtime hours to Ricky Lockard and having discharged Harold Barkley, the Respondent shall offer Harold Barkley reinstatement and make both employees whole for lost earnings and other benefits computed on a quarterly basis from the date of discharge to the date of a proper offer of reinstatement, less net interim earnings in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[3] G.C. Exhs. 16 and 17 were received into the record, but appear missing in the exhibit file (Tr. 319–320, R. Br. p. 10).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Thorgren Tool & Molding Company, Inc., Valparaiso, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees with more onerous working conditions because of the employees' union activity, and threatening them that the Respondent would never reach a collective-bargaining agreement with the Union.

(b) Posting a notice granting employees increased overtime work or announcing other inducements in order to support the decertification effort.

(c) Discriminating against its employees, refusing to provide overtime work to certain employees, and discharging employees because of the Union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Harold Barkley immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position without prejudice to his seniority or any other rights or privileges previously enjoyed and make him and Ricky Lockard whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its Valparaiso, Indiana facility copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''